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 MEDICINE and SOCIETY FOR ASSISTED  
 REPRODUCTIVE TECHNOLOGY

8  
 9 UNITED STATES DISTRICT COURT

## 10 NORTHERN DISTRICT OF CALIFORNIA

## 11 SAN JOSE DIVISION

12 OPTIONS NATIONAL FERTILITY  
 13 REGISTRY, a California Corporation, and  
 JESSICA and class of plaintiffs believed to be  
 similarly situated (women egg donors whose  
 14 eggs were allegedly given to unknown and  
 unauthorized recipients via "egg sharing"  
 without their informed consent, in violation of  
 15 an existing legally binding contract),

16 Plaintiffs,

17 vs.

18 THE AMERICAN SOCIETY FOR  
 19 REPRODUCTIVE MEDICINE; SOCIETY  
 FOR ASSISTED REPRODUCTIVE  
 TECHNOLOGY; DOES 1 through 102  
 20 (REGISTERED INFERTILITY  
 PHYSICIANS) AND DOES 103 through 1500  
 21 (FERTILITY CLINICS AND ASSOCIATED  
 PROFESSIONAL DEFENDANTS),

22 Defendants.

Case No. C 07 5238 JF

Complaint Filed: October 12, 2007

**AMENDED NOTICE OF MOTION AND  
 MOTION OF DEFENDANTS AMERICAN  
 SOCIETY OF REPRODUCTIVE  
 MEDICINE AND SOCIETY FOR  
 ASSISTED REPRODUCTIVE  
 TECHNOLOGY TO DISMISS  
 PLAINTIFFS' COMPLAINT FOR LACK  
 OF SUBJECT MATTER JURISDICTION  
 (FRCP 12(b)(1)) OR ALTERNATIVELY,  
 MOTION TO DISMISS FIRST, SECOND,  
 AND THIRD CAUSES OF ACTION FOR  
 FAILURE TO STATE A CLAIM (FRCP  
 12(b)(6)) and MOTION TO DISMISS  
 CLASS CLAIMS (FRCP 12(b)(6)) OR  
 STRIKE CLASS ALLEGATIONS (FRCP  
 12(f))**

Date: September 5, 2008

Time: 9:00 a.m.

Ctrm.: 3

Trial Date: None.

1 TO PLAINTIFF AND ITS ATTORNEYS OF RECORD:

2 NOTICE IS HEREBY GIVEN that on **September 5, 2008**, at 9:00 a.m., or as soon  
 3 thereafter as the matter may be heard, in Courtroom 3 of this court, located at the 280 S. First  
 4 Street, San Jose, California 95113, defendants The American Society for Reproductive Medicine  
 5 and the Society for Assisted Reproductive Technology will and hereby does move the court to  
 6 dismiss plaintiff's Complaint in its entirety for lack of subject matter jurisdiction, pursuant to  
 7 Federal Rules of Civil Procedure 12(b)(1) *or, in the alternative*, moves the court to (1) dismiss or  
 8 strike the portion of the first claim for breach of oral contract and dismiss the second claim for  
 9 intentional interference with contractual relations because the claims fail to state a claim upon  
 10 which relief can be granted, pursuant to Federal Rules of Civil Procedure 12(b)(6) and 12(f); (2)  
 11 dismiss the third claim for fraud because it does not plead fraud with sufficient particularity as  
 12 required by Federal Rules of Civil Procedure 9(b) and fails to state a claim upon which relief can  
 13 be granted, pursuant to Federal Rules of Civil Procedure 12(b)(6); and (3) dismiss the class action  
 14 claim for failure to state a claim upon which relief can be granted, pursuant to Federal Rules of  
 15 Civil Procedure 12(b)(6) or strike the class action allegations because the Complaint fails to plead  
 16 the requirements set forth in Rule 23, pursuant to Federal Rules of Civil Procedure 12(f).

17 The allegations in the Complaint that are the subject of the motions to strike are as  
 18 follows:

19 1. Complaint 5:7 –

20 “and oral”

21 2. Complaint 2:9-13 –

22 “2. Plaintiffs (intentionally omitted) JESSICA and class  
 23 of plaintiffs believed to be similarly situated is a group of women  
 24 egg donors whose eggs were allegedly given to unknown and  
 25 unauthorized recipients via an industry-wide practice allegedly  
 26 known as “egg sharing” without their informed consent, and in  
 27 violation of an existing legally binding contract.”

28 This motion will be based upon this Notice of Motion and Motion, on the  
 Memorandum of Points and Authorities, Declaration of Nancy Frankel, Request for Judicial

1 Notice, on the pleadings and papers filed herein, and on such other and further matters as the court  
2 may deem just and proper at the hearing.

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4 DATED: June 17, 2008

MUSICK, PEELER & GARRETT LLP

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By:

Catherine M. Lee

Attorneys for Defendants THE AMERICAN  
SOCIETY FOR REPRODUCTIVE  
MEDICINE and SOCIETY FOR ASSISTED  
REPRODUCTIVE TECHNOLOGY

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**AMENDED NOT. OF MOTION & MOTION OF DEF. ASRM & SART TO DISMISS PLAINTIFFS'  
COMPLAINT FOR LACK OF SUBJECT MATTER JURIS OR ALT., MOT. TO DISMISS 1st, 2nd & 3rd  
C/A FOR FAILURE TO STATE A CLAIM and MOT. TO DISMISS CLASS CLAIMS OR STRIKE CLASS  
ALLEGATIONS**